

REVENUE AND TAXATION CODE

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REVENUE AND TAXATION CODE

DIVISION 2. OTHER TAXES

PART 6.7. DOCUMENTARY TRANSFER TAX ACT *†

The heading of Part 6.7 was amended to read as it now appears by Stats. 1968, p. 160.

- Chapter 1. General Provisions and Definitions. §§ 11901-11903.
- 2. Authorization for Tax. §§ 11911-11914.
- 3. Exemptions. §§ 11921-11929.
- 4. Administration. §§ 11931-11934.

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

The heading of Chapter 1 was added by Stats. 1968, p. 160.

- § 11901. Citation.
- § 11902. "County."
- § 11903. "Recorder."

11901. Citation. This act is known and may be cited as the "Documentary Transfer Tax Act."

History.—Stats. 1968, p. 160, in effect April 9, 1968, operative July 1, 1968, changed the title of the act from "Documentary Stamp Act" to "Documentary Transfer Tax Act."

11902. "County." "County" shall include a city and county.

History.—Stats. 1968, p. 160, in effect April 9, 1968, operative July 1, 1968, renumbered former section 11903 as section 11902.

11903. "Recorder." "Recorder" means the recorder of a county.

History.—Stats. 1968, p. 160, in effect April 9, 1968, operative July 1, 1968, renumbered former Section 11904 as Section 11903.

CHAPTER 2. AUTHORIZATION FOR TAX

- § 11911. Authorization; counties and cities; rates; credit.
- § 11911.1. Requirement of parcel number.
- § 11912. Payment of tax.
- § 11913. Transfers of mobilehomes installed on foundation systems.
- § 11914. Purchases of new mobilehomes installed for occupancy. [Repealed.]

11911. Authorization; counties and cities; rates; credit. (a) The board of supervisors of any county or city and county, by an ordinance adopted pursuant to this part, may impose, on each deed, instrument, or writing by which any lands, tenements, or other realty sold within the county shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining

* The provisions of this part shall be operative on and after 12:01 a.m. on January 1, 1968, provided Congress does not provide for a tax on transfers of real property on or before January 1, 1968. If Congress imposes a tax on transfers of real property after January 1, 1968, this part shall have no operative effect on and after the first day of the fiscal year which follows the date such federal tax is imposed.

† Part 6.7 was enacted by Stats. 1967, p. 3162, operative on and after 12:01 a.m. on January 1, 1968.

Note.—No city or county shall directly or indirectly impose a tax on transfers of real property which is not in conformity with this part. For the purposes of this prohibition, "city" does not include a chartered city and "county" does not include a city and county.

thereon at the time of sale) exceeds one hundred dollars (\$100) a tax at the rate of fifty-five cents (\$0.55) for each five hundred dollars (\$500) or fractional part thereof.

(b) The legislative body of any city which is within a county which has imposed a tax pursuant to subdivision (a) may, by an ordinance adopted pursuant to this part, impose, on each deed, instrument, or writing by which any lands, tenements, or other realty sold within the city shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds one hundred dollars (\$100), a tax at the rate of one-half the amount specified in subdivision (a) for each five hundred dollars (\$500) or fractional part thereof.

(c) A credit shall be allowed against the tax imposed by a county ordinance pursuant to subdivision (a) for the amount of any tax due to any city by reason of an ordinance adopted pursuant to subdivision (b). No credit shall be allowed against any county tax for a city tax which is not in conformity with this part.

Construction.—A city incorporated after the effective date of Article XIII A and complying with the requirements of the section may share in documentary transfer tax revenues collected by the county. *City of Cathedral City v. Riverside County*, 163 Cal.App.3d 960.

Leasehold interests.—While leases of real property are generally not taxable as “realty sold” under this section, a lease which is of sufficient longevity to approximate a transfer in fee may be taxed. The operative time period is that specified in Revenue and Taxation Code Section 61(c)(1), 35 years or more. *Thrifty Corp. v. Los Angeles County*, 210 Cal.App.3d 881.

Condemnation order.—Although a final order of condemnation is a type of instrument which is encompassed by this section the State, for whose benefit the instrument is made, is exempt from the tax pursuant to section 11922; furthermore, the condemnee does not qualify as an “other party liable therefor.” Thus there is no document subject to tax and the county recorder cannot refuse to record the transfer document at the request of the exempt entity. *People ex rel. Department of Public Works v. Santa Clara County*, 275 Cal.App.2d 372.

11911.1. Requirement of parcel number. Any ordinance which imposes the documentary transfer tax may require that each deed, instrument or writing by which lands, tenements, or other realty is sold, granted, assigned, transferred, or otherwise conveyed, shall have noted upon it the tax roll parcel number. The number will be used only for administrative and procedural purposes and will not be proof of title and in the event of any conflicts the stated legal description noted upon the document shall govern. The validity of such a document shall not be affected by the fact that such parcel number is erroneous or omitted, and there shall be no liability attaching to any person for an error in such number or for omission of such number.

History.—Added by Stats. 1971, p. 132, in effect May 25, 1971.

11912. Payment of tax. Any tax imposed pursuant to Section 11911 shall be paid by any person who makes, signs or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued.

11913. Transfers of mobilehomes installed on foundation systems. The transfer of any mobilehome installed on a foundation system, pursuant to Section 18551 of the Health and Safety Code, and subject to local property taxation shall be subject to this part.

History.—Added by Stats. 1979, Ch. 1160, in effect January 1, 1980.

11914. Purchases of new mobilehomes installed for occupancy. [Repealed by Stats. 1980, Ch. 1149, in effect January 1, 1981.]

CHAPTER 3. EXEMPTIONS

- § 11921. Instrument to secure a debt.
- § 11922. United States; state or territory; District of Columbia.
- § 11923. Conveyance incident to plan of reorganization or adjustment.
- § 11924. Conveyance pursuant to order of the Securities and Exchange Commission.
- § 11925. Transfer of partnership interest.
- § 11926. Instruments taken in lieu of foreclosure.
- § 11927. Division of assets between spouses pursuant to judgment or agreement.
- § 11928. Conveyance by State or political subdivision; immediate reconveyance to exempt agency.
- § 11929. Conveyance by State to non-profit corporation; realty financed by obligations issued by nonprofit corporation on behalf of governmental unit.
- § 11930. Inter vivos gift or by reason of death.

11921. Instrument to secure a debt. Any tax imposed pursuant to this part shall not apply to any instrument in writing given to secure a debt.

11922. United States; state or territory; District of Columbia. Any deed, instrument or writing to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, is a party shall be exempt from any tax imposed pursuant to this part when the exempt agency is acquiring title.

History.—Stats. 1969, p. 2101, and p. 2138, in effect November 10, 1969, amended this section to provide for exemption when the exempt agency is acquiring title.

11923. Conveyance incident to plan of reorganization or adjustment. (a) Any tax imposed pursuant to this part shall not apply to the making, delivering, or filing of conveyances to make effective any plan of reorganization or adjustment—that is any of the following:

- (1) Confirmed under the Federal Bankruptcy Act, as amended.
- (2) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in Section 101 of Title 11 of the United States Code, as amended.
- (3) Approved in an equity receivership proceeding in a court involving a corporation, as defined in Section 101 of Title 11 of the United States Code, as amended.
- (4) Whereby a mere change in identity, form, or place of organization is effected.

(b) Subdivision (a) shall only apply if the making, delivery, or filing of instruments of transfer or conveyances occurs within five years from the date of the confirmation, approval, or change.

History.—Amended by Stats. 2006, Ch. 538 (SB 1852), in effect January 1, 2007.

11924. Conveyance pursuant to order of the Securities and Exchange Commission. Any tax imposed pursuant to this part shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; but only if—

(a) The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;

(b) Such order specifies the property which is ordered to be conveyed;

(c) Such conveyance is made in obedience to such order.

11925. Transfer of partnership interest. (a) In the case of any realty held by a partnership or other entity treated as a partnership for federal income tax purposes, no levy shall be imposed pursuant to this part by reason of any transfer of an interest in the partnership or other entity or otherwise, if both of the following occur:

(1) The partnership or other entity treated as a partnership is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1986.

(2) The continuing partnership or other entity treated as a partnership continues to hold the realty concerned.

(b) If there is a termination of any partnership or other entity treated as a partnership for federal income tax purposes, within the meaning of Section 708 of the Internal Revenue Code of 1986, for purposes of this part, the partnership or other entity shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by the partnership or other entity at the time of the termination.

(c) Not more than one tax shall be imposed pursuant to this part by a county, city and county or city by reason of a termination described in subdivision (b), and any transfer pursuant thereto, with respect to the realty held by a partnership or other entity treated as a partnership at the time of the termination.

(d) No levy shall be imposed pursuant to this part by reason of any transfer between an individual or individuals and a legal entity or between legal entities that results solely in a change in the method of holding title to the realty and in which proportional ownership interests in the realty, whether represented by stock, membership interest, partnership interest, cotenancy interest, or otherwise, directly or indirectly, remain the same immediately after the transfer.

History.—Stats. 1999, Ch. 75 (AB 1428), in effect January 1, 2000, added “or other . . . tax purposes” after “a partnership”, and substituted “the partnership . . . the following occur” for “a partnership or otherwise if—” after “an interest in” in subdivision (a); substituted “The partnership . . . as partnership” for “Such partnership (or another partnership)” before “is considered”, and substituted “1986” for “1954” after “Revenue Code of” in paragraph (1), substituted “The” for “Such” before “continuing”, and added “or other entity treated as a partnership” after “partnership” in paragraph (2) of subdivision (a); added “or other . . . purposes,” after “of any partnership”,

substituted "1986" for "1954" after "Revenue Code of", substituted "the partnership or other entity" for "such partnership" after "part," substituted "the" for "such" after "realty held by", added "or other entity" after "partnership" and substituted "the" for "such" after "at the time of" in subdivision (b); substituted "a partnership . . . as a" for "such" after "realty held by", and substituted "the" for "such" after "at the time of" in subdivision (c); and added subdivision (d).

11926. Instruments taken in lieu of foreclosure. Any tax imposed pursuant to this part shall not apply with respect to any deed, instrument, or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustor as a result of or in lieu of foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including accrued interest and cost of foreclosure. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes.

History.—Added by Stats. 1971, p. 804, in effect March 4, 1972. Stats. 1973, Ch. 645, p. 1188, in effect January 1, 1973, added "from the mortgagor or trustor as a result of or" after "taken", deleted "a" before "foreclosure", where it first appears, added the rest of the first paragraph thereafter, and added the second paragraph. Stats. 1974, Ch. 413, p. 1003, in effect January 1, 1975, added the second sentence, and deleted the former second paragraph regarding the establishing of entitlement to the exemption.

11927. Division of assets between spouses pursuant to judgment or agreement. (a) Any tax imposed pursuant to this part shall not apply with respect to any deed, instrument, or other writing which purports to transfer, divide, or allocate community, quasi-community, or quasi-marital property assets between spouses for the purpose of effecting a division of community, quasi-community, or quasi-marital property which is required by a judgment decreeing a dissolution of the marriage or legal separation, by a judgment of nullity, or by any other judgment or order rendered pursuant to the Family Code, or by a written agreement between the spouses, executed in contemplation of any such judgment or order, whether or not the written agreement is incorporated as part of any of those judgments or orders.

(b) In order to qualify for the exemption provided in subdivision (a), the deed, instrument, or other writing shall include a written recital, signed by either spouse, stating that the deed, instrument, or other writing is entitled to the exemption.

History.—Added by Stats. 1981, Ch. 985, in effect January 1, 1982. Stats. 1992, Ch. 163, in effect January 1, 1993, substituted "the Family Code" for "Part 5 (commencing with Section 4000) of Division 4 of the Civil Code" after "pursuant to" in subdivision (a):

11928. Conveyance by State or political subdivision; immediate reconveyance to exempt agency. Any tax imposed pursuant to this part shall not apply with respect to any deed, instrument, or other writing by which realty is conveyed by the State of California, any political subdivision thereof, or agency or instrumentality of either thereof, pursuant to an agreement whereby the purchaser agrees to immediately reconvey the realty to the exempt agency.

History.—Added by Stats. 1987, Ch. 301, in effect January 1, 1988.

11929. Conveyance by State to nonprofit corporation; financed by obligations issued by nonprofit corporation on behalf of governmental unit. Any tax imposed pursuant to this part shall not apply with respect to any deed, instrument, or other writing by which the State of California, any

political subdivision thereof, or agency or instrumentality of either thereof, conveys to a nonprofit corporation realty the acquisition, construction, or improvement of which was financed or refinanced by obligations issued by the nonprofit corporation on behalf of a governmental unit, within the meaning of Section 1.103-1 (b) of Title 26 of the Code of Federal Regulations.

History.—Added by Stats. 1987, Ch. 301, in effect January 1, 1988.

11930. Inter vivos gift or by reason of death. Any tax imposed pursuant to this part shall not apply to any deed, instrument, or other writing which purports to grant assign, transfer, convey, divide, allocate, or vest lands, tenements, or realty, or any interest therein, if by reason of such inter vivos gift or by reason of the death of any person, such lands, tenements, realty, or interests therein are transferred outright to, or in trust for the benefit of, any person or entity.

History.—Added by Stats. 1996, Ch. 862, in effect January 1, 1997.

CHAPTER 4. ADMINISTRATION

- § 11931. Collection; allocation of proceeds.
- § 11932. Tax and location shown on face of document.
- § 11933. Recordation subject to payment of tax.
- § 11934. Refunds.

11931. Collection; allocation of proceeds. If the legislative body of any city imposes a tax pursuant to subdivision (b) of Section 11911 equal to one-half the amount specified in subdivision (a) of Section 11911, the county in which such city is located shall grant a credit against the county tax in the amount of the city tax if the city's tax conforms to this part. The county shall collect all taxes imposed pursuant to this part and the county auditor shall allocate the proceeds as follows:

(1) All money which relates to transfers of real property located in unincorporated areas of the county or in a city and county shall be allocated to the county or city and county, as the case may be.

(2) All money which relates to transfers of real property located in a city which imposes a tax on transfers of real property pursuant to this part shall be allocated one-half to such city and one-half to the county.

(3) All money which relates to transfers of real property located in a city which imposes a tax on transfers of real property not in conformity with this part shall not be credited against the county tax and the entire amount collected by the county shall be allocated entirely to the county.

(4) All money which relates to transfers of real property in a city which does not impose a tax on transfers of real property shall be allocated entirely to the county.

History.—Original Section 11931 concerning the sale and furnishing of stamps by the State Board of Equalization was repealed by Stats. 1968, p. 161, in effect April 9, 1968, operative July 1, 1968. Current Section 11931 was formerly Section 11932 which was renumbered by Stats. 1968, p. 161, in effect April 9, 1968, operative July 1, 1968.

11932. Tax and location shown on face of document. If a county has imposed a tax pursuant to this part, every document subject to tax which is submitted for recordation shall show on the face of the document the amount

of tax due and the incorporated or unincorporated location of the lands, tenements or other realty described in the document. If the party submitting the document for recordation so requests, the amount of tax due shall be shown on a separate paper which shall be affixed to the document by the recorder after the permanent record is made and before the original is returned as specified in Section 27321 of the Government Code.

History.—Stats. 1968, p. 161, in effect April 9, 1968, operative July 1, 1968, renumbered former Section 11932 as 11931 and added the present Section 11932.

11933. Recordation subject to payment of tax. If a county has imposed a tax pursuant to this part, the recorder shall not record any deed, instrument or writing subject to the tax imposed pursuant to this part, unless the tax is paid at the time of recording. A declaration of the amount of tax due, signed by the party determining the tax or his agent, shall appear on the face of the document or on a separate paper in compliance with Section 11932, and the recorder may rely thereon; provided he has no reason to believe that the full amount of the tax due has not been paid. The declaration shall include a statement that the consideration or value on which the tax due was computed was, or that it was not, exclusive of the value of a lien or encumbrance remaining on the interest or property conveyed at the time of sale. Failure to collect the tax due shall not affect the constructive notice otherwise imparted by recording a deed, instrument or writing.

History.—Stats. 1968, p. 162, in effect April 9, 1968, operative July 1, 1968, repealed the former Section 11933 which concerned the sale of stamps, and added a new Section 11933. Stats. 1969, p. 2101, in effect November 10, 1969, substantially revised this section.

11934. Refunds. Claims for refunds of taxes imposed pursuant to this part shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of this code.

History.—Stats. 1968, p. 162, in effect April 9, 1968, operative July 1, 1968, repealed the former Section 11934 and renumbered the former Section 11935 as 11934.

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